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How Do Civil Service Disciplinary Hearings and Labor Arbitration of Discipline Cases Co-exist?

by Joel A. D'Alba

I. Introduction

In enacting the Illinois Public Labor Relations Act (IPLRA) and the Illinois Educational Labor Relations Act (IELRA), the Illinois General Assembly was concerned about preserving the existing civil service and teacher tenure concepts. State law provided for public employees at the state, county and municipal levels to be recruited, hired, tested and evaluated by civil service commissions or boards of fire and police commissioners. These laws also provided that employee discipline, including suspension and discharge, would be considered by these very same commissions and boards. The legislative concern focused on the impact of collective bargaining on these boards and commissions and a sincere desire that they continue to function after the implementation of the statutes.

The legislature provided that the traditional civil service functions of selection of new employees and examinations techniques would be non-mandatory subjects of bargaining. However, on the core collective bargaining issues of job security and the right of employees to challenge discharge and discipline, the legislature left open the possibility for employees to arbitrate grievances arising under the collective bargaining agreement. The resolution of this aspect of civil service law was not as clear, and a number of courts have created a co-existence between civil service commission disciplinary hearing proceedings and the right to arbitrate. This paper will analyze the various attempts to resolve the potential conflicts between civil service and tenure laws and collective bargaining and arbitration.

II. Exclusivity of Civil Service Proceedings

Prior to the IPLRA and the IELRA, employers could avoid arbitration under the theory that their authority could not be delegated to an arbitrator.[1] Tensions between arbitration and collective bargaining and civil service hearing rights were sought to be resolved with the passage of the new collective bargaining laws in 1983. The first case after 1983 to deal with these issues was *City of Decatur v. AFSCME, Local 268*.[2] The union representing Decatur employees filed an unfair labor practice charge alleging that the city refused to bargain over a union proposal to eliminate the jurisdiction of the Decatur Civil Service Commission over disciplinary matters involving terminations, suspensions of five days or more, and multiple suspensions within a 6-month period. Instead, all disciplinary questions would be appealed to final and binding arbitration.[3] A civil service commission had been approved by Decatur voters in a referendum conducted under the Illinois Municipal Code,[4] and the city argued there was no duty to bargain over disciplinary matters that fell within the scope of the civil service system.

The Illinois Supreme Court required the city to bargain. The court focused on Section 7 of IPLRA, which defines the duty to bargain and specifically provides:

> The duty "to bargain collectively" shall also include an obligation to negotiate over any matter with respect to wages, hours and other conditions of employment, not specifically provided for in any other law or not specifically in violation of the provisions of any law. If any other law pertains, in part, to a matter affecting the wages, hours and other conditions of employment, such other law shall not be construed as limiting the "duty to bargain collectively" and to enter into collective bargaining agreements containing clauses which either supplement, implement, or relate to the effect of such provisions in other laws.[5]

The court interpreted this accommodation provision more narrowly than the Labor Board, which had held that

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Section 7 overrode any contrary statutory command. The court rejected this interpretation because it effectively eliminated any potential conflict between the bargaining duty and another statute; no statute would ever limit the duty to bargain. While the court declined to adopt the Labor Board's broadest possible reading of the statute, it believed a narrow construction would frustrate the declared policy of the Act and specifically noted that the legislature did not intend "to make the broad duties imposed by the act hostage to the myriad of state statutes and local ordinances pertaining to matters of public employment."[6]

The existence of another statute dealing with the subject that might come up in bargaining does not necessarily remove that subject from the scope of the duty to bargain. The court noted that a minimum wage law, for example, would not preclude bargaining for wages above the minimum level. However, the accommodation provision of Section 7 would bar bargaining for wages below the statutory minimum.

The civil service commission adopted by Decatur voters was considered by the court to be "an optional scheme and not one imposed by the state on any municipal body."[7] Because the City of Decatur had authority, as a home rule unit of government, to eliminate features of its civil service system, the union's proposal to submit all disciplinary questions to final and binding arbitration was a mandatory subject of bargaining. Bargaining over a new or replacement procedure was allowed because the city had home rule authority to change the disciplinary system.

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After *Decatur*, a question remained as to whether its holding was limited to home rule units. The answer to this question is found in the holdings of two appellate court decisions involving the Town of Cicero and the City of Markham. In *City of Markham v. State and Municipal Teamsters,*[8] the appellate court determined that union and non-home rule employers were prohibited from bargaining over a proposal which would have established a final and binding arbitration procedure for disciplinary matters. The issue arose in the context of the court's review of an interest arbitration award. The court held that a non-home rule city does not possess inherent governmental power not specifically provided by the legislature. Therefore, non-home rule municipalities must adhere to the Illinois Municipal Code's Board of Fire and Police Commissioners Act which specifies the statutory procedures that a municipality must follow in disciplining and terminating its employees in the uniformed services. Because a non-home rule municipality lacks power to abolish or amend a statutory mandate, it could not, pursuant to an interest arbitration award or even through collective bargaining, agree with the labor organization to avoid these statutory obligations. For these reasons, the interest arbitrator appointed to resolve the dispute in *Markham* lacked the authority to issue an award requiring the non-home rule city to submit disciplinary matters to grievance arbitration.

The *Markham* court did not consider the very significant section of the IPLRA providing that it is to be the predominant statement of labor relations law in Illinois and is to supercede contrary statutes relating to wages, hours and other conditions of work and that in the case "of any conflict between the provision of this Act and any other law . . . the provisions of this Act or any collecting bargaining agreement negotiated thereunder shall prevail and control."[9] Under Section 7 of the Act, an employer and a labor organization may enter into a collective bargaining agreement to "supplement, implement or relate to the effect of such provisions in other laws."[10] Unlike *Decatur,* where the union sought to eliminate the civil service system, the clause ordered by the interest arbitrator in *Markham* gave employees an option to appeal disciplinary actions either to the Board of Fire and Police Commissioners or to arbitration. There was no provision in the contract that eliminated the authority or jurisdiction of the Board of Fire and Police Commissioners. That fact alone should have protected the clause from judicial rejection under Sections 7 and 15 of the IPLRA.

Markham stands in stark contrast to a decision involving a home rule unit. In *Illinois Fraternal Order of Police Labor Council v. Town of Cicero,*[11] a union filed a law suit to compel arbitration of a police officer's disciplinary grievances. The court held that the town and union had authority to enter into a collective bargaining agreement allowing employees to grieve and arbitrate discipline or termination. A home-rule municipality has the power to alter the provisions of the Board of Fire and Police Commissioners Act, and under *Decatur* the collective bargaining agreement in *Cicero* was upheld, and the town was ordered to arbitrate the police officers' grievances. The court distinguished the decision in *Markham* because of the non-home rule issues raised in that case. The employer in *Cicero* argued that the court must presume the parties did not agree to arbitrate disciplinary matters, but the court noted that the mandate of Section 8 of the IPLRA prevailed.

One significant statutory provision not prominent in *Decatur* was the mandatory arbitration clause of Section 8 of the IPLRA. Section 8 provides:

> The collective bargaining agreement negotiated between the employer and the exclusive representative shall contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and shall provide

> for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise. Any agreement containing a final and binding arbitration provision shall also contain a provision prohibiting strikes for the duration of the agreement. The grievance and arbitration provisions of any collective bargaining agreement shall be subject to the Illinois "Uniform Arbitration Act." The costs of such arbitration shall be born equally by the employer and the employee organization.[12]

The IELRA contains essentially the same language, except that enforcement of labor arbitration agreements and claims to compel arbitration may be pursued as unfair labor practices before the Illinois Educational Labor Relations Board.[13] It is this clause which may determine the outcome of the conflict between the civil service laws and arbitration under a collective bargaining agreement. The problem presented is whether the employee has a right to proceed before (1) the arbitration panel, (2) the Board of Fire and Police Commissioners, Civil Service Commission or similar tribunal, or (3) both.

A recent decision in *Wheeling Firefighters Association*[14] by the Illinois Labor Relations Board-State Panel, highlights this tension and presents a solution to the problem in part because the union proposed a far less ambitious disciplinary proposal than the one in *Decatur*. No attempt was made to eliminate the jurisdiction of the Wheeling Board of Fire and Police Commissioners over disciplinary matters. The union's collective bargaining contract already contained language limiting the employer's ability to discipline, suspend or discharge to the standard just cause test found in many collective bargaining agreements.[15] The contract also contained a clause requiring the employer to comply with provisions of the Firemen's Disciplinary Act.[16] Several provisions of the collective bargaining agreement provided that the Wheeling Board of Fire and Police Commissioners would be the exclusive tribunal adjudicating discipline disputes and that grievances involving the Firemen's Disciplinary Act could not be submitted to arbitration. Suspension and discharge matters within the jurisdiction of the Board of Fire and Police Commissioners were considered to be subject to the exclusive statutory jurisdiction of that Board. A contract provision also recognized that the agreement was not intended "to replace or diminish the jurisdiction of the Board of Fire and Police Commissioners to hire and discipline employees" and that these matters under that jurisdiction shall not be subject to the grievance procedure.[17]

As a result of the employer's conduct in collective bargaining negotiations, the union filed an unfair labor practice charge alleging that the employer insisted to the point of impasse on the continuation of the exclusive jurisdiction provision requiring that all suspension and discharge matters be presented before the Board of Firemen and Police Commissioners and that the employer also refused to remove the contract language blocking the submission to arbitration of grievances protesting violations of the Firemen's Disciplinary Act.[18] The union's claim rested upon the mandate that all collective bargaining agreements provide for final and binding arbitration of disputes concerning their administration or interpretation, unless mutually agreed otherwise. The union argued that the employer's creation of a bargaining impasse was designed to force the union to give up its statutory right to arbitrate.

An interest arbitration proceeding was initiated by the union to resolve the bargaining impasse. In arbitration the employer proposed as final offers the continuation of the exclusive jurisdiction of the Board and Fire Police Commissioners and the continuation of a contract clause barring the union from arbitrating the employer's compliance with the Firemen's Disciplinary Act. The net result of the employer's proposals would have been no arbitration of disciplinary suspensions and termination cases and grievances alleging violations of the Firemen's Disciplinary Act.[19]

The State Panel found these employer proposals to be non-mandatory subjects of bargaining in that they sought the union's waiver of its rights under Section 8 to arbitrate disputes concerning substantive contractual provisions. The State Panel held:

> In other words, where there exists a substantive article in a contract, Section 8 grants a party the corresponding right to use arbitration to resolve disputes regarding that provision. While a party may agree to waive this right, it cannot be required to relinquish a right guaranteed by the statute.[20]

The State Panel's decision completes the consideration of this issue by all three public sector labor boards in Illinois. Each held that waiver of a statutory right is a permissive subject of bargaining.[21] By refusing to accept an agreement which does not contain a waiver of the union's statutory right to arbitrate a substantive provision in the contract, the employer essentially "holds the rest of the contract terms hostage to its attempt to force the union's acceptance of an alternative to grievance arbitration, thus failing to bargain in good faith."[22] What distinguishes the *Wheeling* decision from earlier cases involving waivers of the right to arbitrate is the employer's defense based on the recent amendment to the Board of Fire and Police Commissioners Act.[23] Section 17 was amended as follows:

> Except as hereinafter provided, no officer or member of the fire or police department of any municipality subject to this division 2.1 shall be removed or discharged except for cause, upon written charges, and after an

> opportunity to be heard in his own defense. The hearing shall be as hereinafter provided, *unless the employer and the labor organization representing the person have negotiated an alternative or supplemental form of due process based upon impartial arbitration as a term of a collective bargaining agreement. In non-home rule units of government, such bargaining shall be permissive rather than mandatory unless such contract term was negotiated by the employer and the labor organization prior to or at the time of the effective date of this Amendatory Act, in which case, such bargaining shall be considered mandatory.*[24]

This provision appears to require collective bargaining in home rule units for alternative or supplemental forms of due process based upon impartial arbitration. However, for non-home rule units, such bargaining may not be required unless a collective bargaining agreement providing for alternative or supplemental forms of due process was negotiated prior to or at the time of the amendment. This amendment was passed to protect those non-home rule units of government that had agreed with unions to allow disciplinary matters to be submitted to final and binding arbitration.

The State Panel found the employer's proposal submitted in *Wheeling* was not protected by this amendment. The Board found the amendment applies only "to a proposal which would establish or modify disciplinary procedures and processes of arbitration. Here, the Employer's proposals relate to whether matters *already* contained in the contract will be resolved by a civil service procedure or to arbitration."[25]

Although Wheeling is a home rule municipality, the employer argued that the new amendment prevented it from bargaining over grievance arbitration for disciplinary matters. That argument was rejected because the legislation had been created to protect police or fire collective bargaining agreements in non-home rule municipalities, where those agreements provided for grievance arbitration of disciplinary matters. Under *Markham*, those agreements were arguably unenforceable. The legislation to resolve these issues was enacted as Public Act 91-650, effective November 30, 1999, and was eventually codified as Section 5/10-2.1-17 of the Illinois Municipal Code.

The legislative debates demonstrate the intent of the House and the Senate in passing this legislation. In the Senate, on third reading of the bill, Senator Redogono explained its purpose:

> House Bill 1165 would allow non-home rule municipalities to make arbitration of discipline a permissive subject of bargaining if they have not already negotiated arbitration of discipline in the past. There's a couple of points that need to be emphasized here. This applies only to non-home rule communities. . . .[26]

Senate Amendment No. 1 was approved on May 11, 1999, and arrived in the House on May 12 where a motion to concur in the Senate amendment was filed. The House concurred in the Senate amendment on May 20, 1999. On May 20, its sponsor, Representative Hoffman, explained its purpose:

> Essentially, what this does is it indicates that non-home rule municipalities will have discipline as a permissive subject of bargaining, for non-home rule municipalities, who have not negotiated arbitration of discipline in the past. In addition, if they have negotiated arbitration in the past, then the legislation would make arbitration of discipline a historical mandatory subject of bargaining for these non-home rule municipalities. In addition, the contract provisions that were in effect prior to the *Markham* Appellate Court's ruling would essentially be back in place. I think that this is something that is reasonable. It's an initiative of the Associated Firefighters of Illinois and addresses the issue of how we are going to ensure that discipline provisions, that had been previously negotiated, are back in force . . . It does two things, Representative, the first . . . Well, actually three things, three general things, the first thing, it only applies to non-home rule municipalities. And if you have not previously bargained or had a clause, with regard to discipline and in your contract, it indicates that it is permissible. If you did not previously have the discipline as an agreement. . . . if you, prior to the *Markham* decision, if you had previously negotiated discipline arbitration in good faith within the existing contracts, then it would be a historical mandatory subject of bargaining . . . .
>
> Hoffman: 'Yeah. Representative, the *Markham* decision essentially took away the rights that we have in this bill. That's why we believe its necessary for the firefighters and the policemen to have those rights. . . .'
>
> Hoffman: 'The whole issue here is with regard to the discipline bargaining.'
>
> Black: 'Alright (sic). So, the Senate Amendment that you are asking us to concur in, only impacts non-home rule municipalities correct?"
>
> Hoffman: 'Yes.'
>
> Black: 'It does not affect counties, sheriffs or the Sheriff's Merit Commission?'
>
> Hoffman: 'Not at all. Only non-home rule municipalities.'
>
> Hoffman: . . . So, essentially what the Bill does, is for non-home rule municipalities, if you had previously negotiated a discipline arbitration in good faith, within the existing contract, then it is historical and mandatory for the future. But if you hadn't previ-

ously, then it is permissive.[27]

In the veto override session, Representative Hoffman once again explained the necessity for the legislation. Under *Markham*, unions that had previously negotiated collective bargaining contracts providing for arbitration of disciplinary matters were unable to enforce those collective bargaining contract provisions. Thus, the first sentence of the legislation provided a mechanism for such enforcement. Representative Hoffman reiterated that non-home rule municipalities would be required to bargain if they had negotiated discipline arbitration prior to *Markham*.[28]

Representative Hoffman later indicated that the legislation ". . . allows local government to put back into place negotiated agreements that they already had with their employees with regard to disciplinary procedure."[29]

Representative Hoffman also acknowledged the impact of *Markham* on the need for this legislation when he was asked if this was in direct response to the decision.

> Yes. I think what happened is the Appellate Court case threw this whole issue to the forefront because many municipalities and local organizations for years had been bargaining over this issue with regard to discipline and they believe that the court case, essentially, said what had historically been done could not longer be done. And agreements that had been historically reached may not be in force and effect. So I would say, yeah, it is a result of the court decision.[30]

In the Senate, the veto was considered on November 30, 1999. The House Bill was explained as an amendment to the "Municipal Code to make discipline a permissive subject of collective bargaining for non-home rule communities."[31]

Wheeling is the first decision to analyze the impact of this amendment. The collective bargaining agreement already provided that employees would be disciplined only for just cause and that the employer would comply with the Firemen's Disciplinary Act. The employer's proposal to exclude these matters from arbitration violated Section 8 of the IPLRA. The amendment to deal with the *Markham* case was not designed to give home rule employers (such as Wheeling) a right to circumvent the mandatory arbitration provisions of the Act.

In another case, the University of Illinois argued that it no longer had the to arbitrate disciplinary matters, even though it had negotiated such a provision in a collective bargaining agreement. In *Illinois Nurses Association*, the IELRB decided whether the University of Illinois had statutory authority to enter into final and binding arbitration agreements to resolve disciplinary disputes.[32] The University argued that the Illinois Supreme Court decision in *Board of Education of Rockford School District 205* v. *IELRB* barred arbitration of university employee discipline grievances. In *Rockford II*,[33] the court rejected an arbitration award challenging the school board's decision to place a teacher under a statutory notice to remedy procedure.

In *Illinois Nurses Association*, the IELRB was faced with three separate arbitration decisions reinstating two nurses and a clerical employee to their former positions at the University of Illinois Hospital. The two nurses filed grievances challenging their terminations pursuant to the INA collective bargaining agreement, and the clerical employee challenged the discharge under the agreement between the University and General Service Employees Union Local 73 SEIU. In all three cases, the arbitrators determined that the employer's discipline violated the just cause provisions of the collective bargaining agreements. The arbitrator's reinstatement awards included short term suspensions of thirty days in two cases and a long term suspension in the third case. The University refused to comply with the arbitration awards, and the INA and Local 73 filed unfair labor practice charges pursuant to Sections 14a(1) and 14a(8) of the IELRA.[34]

The only issue before the IELRB was whether the awards were binding. The test for determining whether an arbitration award is binding considers the following factors:

> [W]hether the award was rendered in accordance with the applicable grievance procedure, whether the procedures were fair and impartial, whether the award conflicts with other statutes, whether the award is patently repugnant to the purposes and policies of the Act, and any other basic challenge to the legitimacy of the award. Otherwise we shall not redetermine the merits or redetermine the issues presented to the arbitrator.[35]

Although review of arbitration awards is extremely limited, the statutory challenge to the awards in the University of Illinois case was based upon Section 10(b) of the IELRA. That section provides:

> The parties to the collective bargaining process shall not effect or implement a provision in a collective bargaining agreement if the implementation of that provision would be in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly of Illinois. The parties to collective bargaining process may effect or implement a provision in a collective bargaining agreement if the implementation of that provision has the effect of supplementing any provision in any statute or statutes enacted by the General Assembly of Illinois pertaining to wages, hours or other conditions of employment; provided however, no provision in a collective bargaining agreement may be effected or implemented if such provision has the effect of negating, abrogating, replacing, reducing, diminishing, or limiting in any way any employee rights, guarantees or

> privileges pertaining to wages, hours or other conditions of employment provided in such statutes. Any provision in a collective bargaining agreement which has the effect of negating, abrogating, replacing, reducing, diminishing or limiting in any way any employee rights, guarantees or privileges provided in an Illinois statute or statutes shall be void and unenforceable, but shall not affect the validity, enforceability and implementation of other permissible provisions of the collective bargaining agreement.[36]

The object of Section 10(b) was to define the scope of bargaining for public education. The heading for Section 10 is "Duty to Bargain," and paragraph (a) establishes the requirements to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment. Section 10(c) mandates final and binding arbitration of disputes concerning the administration or interpretation of collective bargaining agreements and requires that the agreement contain appropriate language prohibiting strikes for the duration of the agreement. With the exception of the references to the Uniform Arbitration Act in Section 8 of the IPLRA, IPLRA Section 8 and IELRA Section 10(c) are the same.

Section 10(b) deals with provisions of state law, primarily the School Code, and their relationship with collective bargaining contracts. As interpreted by the Illinois Supreme Court in *Rockford II*, Section 10(b) has to be read in the context of the School Code's provisions. There, Sections 10-22.4 and 24-12 were noted by the court as the key provisions providing mandatory procedural requirements for a school board's dismissal of a tenure teacher. Section 10-22.4 of the School Code grants school boards the power to dismiss teachers, "subject, however, to the provisions of Section 24-10 to 24-15, inclusive."[37] The procedure for the dismissal of tenured teachers includes a requirement that the school board provide a "notice to remedy." The notice to remedy provision is set forth in Section 24-12, and it provides:

> If a dismissal or removal is sought for any other reason of cause, including those under Section 10-22.4, the board must first approve a motion containing specific charges by a majority vote of all its members. Written notice of such charges shall be served upon the teacher within 5 days of the adoption of the motion. Such notice shall contain a bill of particulars. No hearing upon the charges is required unless the teacher within 10 days after receiving notice requests in writing of the board that a hearing be scheduled, in which case the board shall schedule a hearing on those charges before a disinterested hearing officer on a date no less than 15 nor more than 30 days after the enactment of the motion . . . .
>
> Before setting a hearing on charges stemming from causes that are considered remediable, a board must give the teacher reasonable warning in writing, stating specifically the causes which, if not removed, may result in charges.[38]

The *Rockford II* Court concluded that issuance of a "notice to remedy" is an integral part of the statutory scheme for dismissal of a teacher. It reasoned that allowing an arbitrator to determine whether a school board acted with just cause in issuing a "notice to remedy" was inconsistent and conflicted with the School Code, which granted the power of dismissal to the school board. The court held that the "just cause" provision of the collective bargaining agreement challenged the employer's authority to issue a "notice to remedy" and provided a duplicate method for challenging the dismissal process. It reasoned that a collective bargaining agreement containing such a clause is inconsistent with or violates the School Code, and, therefore, the arbitration award challenging the "notice to remedy," given to the grievant in that case, was not binding. The court concluded that the employer did not commit an unfair labor practice by failing to comply with the arbitration award.

In *Illinois Nurses Association*, the University argued that *Rockford II* implicitly overturned an earlier appellate court decision that considered the impact of the State Universities Civil Service Act (Civil Service Act) in the context of a labor arbitration provision in a collective bargaining agreement. The appellate court rejected an argument that Section 10(b) of the IELRA barred the arbitration of discipline claims filed by employees subject to the jurisdiction of the Civil Service Act. *Board of Governors* interpreted the Civil Service Act in relation to the IELRA, but did not interpret the School Code in relation to the IELRA. That, however, was not the only major distinction from *Rockford II* because Section 17 of the IELRA specifically preserves Section 36(d) of the Civil Service Act. Section 36(d) allows each university covered by the Civil Service Act

> to negotiate with representatives of employees to determine appropriate ranges or rates of compensation or other conditions of employment and may recommend to the Merit Board for establishment the rates, ranges or other conditions of employment which the employer and employee representatives have agreed upon as fair and equitable.[39]

The same civil service act in *Board of Governors* was the subject of the litigation in *Illinois Nurses Association*, and the IELRB specifically held that the Civil Service Act requires written charges to be filed against an employee in order to obtain a discharge, but there is no "language requiring a specified employer to approve the written charges by a majority vote."[40] Thus, the absence of any requirement for a majority vote by the employer's trustees or board mem-

bers distinguishes the Civil Service Act discipline procedure from the School Code.

> When an employer is authorized to dismiss its own employees and required to follow certain procedures in dismissing them, the potential for a statutory conflict is greater than when a civil service commission is evaluating the propriety of another entity's dismissal of its employees.[41]

The IELRB declined to hold that *Board of Governors* had been implicitly overruled by *Rockford II* and held that an arbitration procedure is permitted as a supplement to employee rights under the Civil Service Act and that such supplement is neither inconsistent nor conflicting with the statutory procedure. The University argued that *Markham* precluded collective bargaining over employee discipline, but the Board noted that the court in *Markham* discussed neither *Board of Governors* nor the Civil Service Act and that the court in *Cicero* quoted with approval language from *Board of Governors*.

In the appellate court, the very same arguments were raised. The court noted that the appellate court in *Rockford II* "distinguished its decision in *Board of Governors* and noted that the Civil Service Act contained no provisions similar to those in the [School Code], that would prevent universities and their non-academic employees from agreeing to grieve discharge proceedings to arbitration."[42] In other words, nothing in the Civil Service Act created an exclusive authority for the Merit Board to adjudicate dismissals of employees. The appellate court in *Illinois Nurses Association* held that *Board of Governors* and *Rockford* explicitly rejected the University's argument that the arbitrators' awards were in violation of, or in conflict, with the Civil Service Act:

> In *Rockford II*, the supreme court affirmed *Rockford I* without addressing, let alone criticizing, the *Board of Governors'* holding that arbitration of non-academic civil service employee dismissals is permissible under the Civil Service Act and the Illinois Labor Relations Act. Accordingly, we reject the University's suggestion that the supreme court impliedly or tacitly overruled *Board of Governors*.[43]

The court also rejected argument that *Markham*, *Nall v. International Association of Machinists and Aerospace Workers Lodge No. 822*;[44] and *Chicago School Reform Board of Trustees v. IELRB*[45] required reversal of the IELRB. All three cases were distinguished because they did not address the specific issue presented in *Illinois Nurses Association*, *i.e.*, whether the Civil Service Act prohibits arbitration of non-academic employee discharges. In *Nall*, the court interpreted a provision of the Sheriff's Merit System Law and concluded that a sheriff and labor organization were prohibited from bargaining over disciplinary and promotion decisions. The *Chicago School Reform Board* decision involved a court rejection of an arbitrator's award reinstating a "full-time basis" substitute teacher. The decision conflicted with the school board's exclusive authority to discharge substitute teachers. *Markham* was distinguished because it involved a non-home rule unit of government and a court holding that the discipline of police officers was not a proper subject for bargaining based upon mandatory procedures for discipline in the Illinois Municipal Code.

III. Preclusive Effect of Civil Service Proceedings

The university in *Illinois Nurses Association* argued that Section 10(b) of the IELRA prohibits the "potential for conflict between collective bargaining agreements and statutes," but the IELRB held that Section 10(b) as interpreted in *Rockford II* does not prohibit "potential conflicts." Rather the statute in unambiguous language prohibits violations, inconsistencies or conflicts with Illinois statutes. The university was alluding to the possibility of arbitration decisions interpreting the just cause provisions of collective bargaining agreements and conflicting with decisions of the Merit Board or a Board of Fire and Police Commissioners. Alluding to this issue, and relying on the metaphor of bites from an apple, the Board characterized this issue as one involving separate claims in which an employee is permitted to have two bites, "but the bites are from different apples."[46]

This issue of different tribunals dealing with similar facts and similar personnel transactions has been considered, but there is no definitive resolution of the question. *Board of Governors* first raised the question in the context of an unfair labor practice proceeding in which the employer was alleged to have refused to process a grievance over an employee discharge. The court held that the Civil Service Act was not an exclusive method for reviewing discharges of university employees, but that a statutory hearing with a determination on the merits would bar a grievant from proceeding to arbitration. In *Board of Governors*, the discharged employee appeared before a Merit Board hearing officer, and during the course of the hearing tried to terminate that proceeding on the ground that a grievance-arbitration proceeding under the collective bargaining agreement should take precedence. The request to terminate the hearing was denied, and the hearing officer issued a decision finding cause to discharge the employee. In a separate proceeding before the IELRB the employee and the union argued that the employer violated the IELRB by failing to process the grievance. That argument was ultimately sustained by the IELRB and the appellate court, but the IELRB's remedy requiring the employer to process the grievance was rejected on the grounds of judicial economy and the principles of *res judicata*. The court noted that the

employee and her union made no objection at the start of the Merit Board hearing:

> While the result here may seem harsh, it is no more so than in myriad other proceedings where a litigant or party is required to raised their objections to a proceeding in which they appear, and also to pursue the objections through final review in order to preserve them. The fact that the employee's grievance was returned to her prior to the proceeding before the Merit Board did not eliminate her duty to pursue her objections to that proceeding, rather than permitting its decision to become final.
>
> In this case, Brown did not seek judicial review of the Merit Board decision and did not seek a stay of its enforcement. As an aside legislative action could provide guidance and remedies for those types of proceedings.[47]

The court's holding on *res judicata* does not necessarily end the discussion as to the opportunity of an employee to proceed in both arbitration and in a statutory proceeding. The same court in *Board of Trustees of the University of Illinois v. IELRB,* held that an election of remedies proposal offered by the University of Illinois in collective bargaining negotiations was a permissive subject of bargaining because it would have required the union to waive a statutory right to mandated arbitration under Section 10(c) of the IELRA.[48] The university had proposed that the employee be required to elect one of the two proceedings (arbitration or Merit Board) to challenge discipline or discharge. Because the union could not be required to waive a statutory right to arbitration, both the IELRB and the court left open the possibility of dual track proceedings, described in *Illinois Nurses Association* by the IELRB as two bites of two apples. The court noted the conundrum presented by the Board's decision:

> Despite this court's previously expressed concern that dual dispute resolution procedures be avoided in the interests of judicial economy and to avoid problems of *res judicata* the Board felt that an employee could not be precluded from pursuing a claim the right to which was provided by statute. Although the individual had a statutory right to Merit Board review under which the Union and the University could not agree to waive, the Board found a proposal giving the individual the right to choose between arbitration and Merit Board Review was a permissive subject of bargaining not a prohibited one.[49]

Without any further decision on this question of *res judicata*, the court upheld the IELRB on the ground that the proposal to exclude matters from arbitration was a permissive subject of bargaining.

In a related case, *Peoria Fire Fighters Local 544, International Association of Fire Fighters v. Korn,*[50] the court barred a union from compelling arbitration of a discharge claim after a decision on the discharge had been issued by the Board of Fire and Police Commissioners. The collective bargaining agreement provided for an election of remedies in which an employee had an option to appeal a disciplinary action before the Board of Fire and Police Commissioners or by filing a grievance through a grievance arbitration procedure. The contract was signed on July 8, 1998, almost two years after the employees at issue in this case had been charged with sexual misconduct. A hearing was conducted before the Board of Fire and Police Commissioners, and both employees were dismissed. The decision was upheld on administrative review by the appellate court. While that case was pending review by the appellate court, the two discharged fire fighters filed a grievance pursuant to the collective bargaining agreement that had been made retroactive to cover the period of time in which they were discharged. Both the circuit court and the appellate court denied claims by the union to compel arbitration of the discharge grievances. The court's decision not to compel arbitration on the basis of *res judicata* rested on the discussion in *Board of Governors,* but a dissenting opinion in that case noted that the contractual grievance procedure and the statutory discharge claim were fundamentally different claims that should not be barred by the doctrine of *res judicata.*[51]

To further complicate the jurisprudence on the relationship between disciplinary commissions and the labor acts, the same court that decided *Peoria Fire Fighters* recently upheld a Labor Board decision finding that a sheriff had violated the IPLRA by a retaliatory discharge of an employee who engaged in concerted and protected activities. *In Grchan v. ISLRB,*[52] the Sheriff's Merit Commission had held that the employee was discharged for cause, but the State Labor Board found the existence of an anti-union motive from the employer's expressions of hostility toward union activity, the proximity in time between the employee's union activity and the discharge decision, and inconsistences between the employer's proffered reason for taking the adverse action and other actions against the employee. The Labor Board ordered the employee reinstated with back pay.

On appeal, the sheriff argued that the doctrine of *res judicata* barred the Labor Board from considering the employee's claims arising out of the discipline imposed by the Merit Commission. The court refused to apply *res judicata* because that doctrine extends to those issues that could have been fully litigated in a former proceeding, as well as those actually litigated. The unfair labor practice issues presented in *Grchan*, including allegations of anti-union motivation, according to the court, would not constitute a defense to the sheriff's charges of misconduct, and the employee could not have fully litigated

his unfair labor practice claims before the Merit Commission. The court upheld the ISLRB's finding that the sheriff had committed an unfair labor practice.

Would the same doctrine apply to a labor arbitration proceeding interpreting a collective bargaining contract's just cause provision and a competing proceeding before a board of fire and police commissioners, merit board or similar commission also responsible to consider just cause, good or sufficient causes or some other variation of that test? Based on the current status of the law, employees may have two separate tracks for review of discharge claims, but there is a serious question as to whether one proceeding would have preclusive effect over another. One sensible and practicable solution to this problem would be a contract provision providing for an election of remedies of one tribunal over the other. However, *Board of Trustees* teaches that this a permissive subject of bargaining which one party can not force on the other, and *Wheeling* holds that any attempt to preserve the exclusive jurisdiction of a statutory proceeding is an unfair labor practice. As a result of these two holdings, parties may negotiate such an election of remedies provisions, but a party may not be compelled to do so.

IV. Conclusion

Even though the legislature protected the status of civil service commissions, boards of fire and police commissioners and related agencies, subsequent labor board and court decisions have demonstrated the real problems that are created by the co-existence of discipline cases before these administrative tribunals and labor arbitrators. In the absence of an agreement for an election of remedies, there is a possibility of two parallel disciplinary proceedings, with litigation to sort out the preclusive effect of one proceeding on another a real possibility. It is entirely conceivable that an employer could file charges with a board of fire and police commissioners, and the employee or union could file a corresponding grievance to protest the discharge decision. In this context, motions to stay and suits to compel arbitration would be quite likely. There also remains the possibility of a grievance being filed at the conclusion of a decision of an administrative tribunal, followed by court litigation over the appropriateness of such an approach. Obviously, which of the proceedings will go forward may be left to court review, and one guiding principle to consider in that context is the predominance given to collective bargaining contracts pursuant to Section 15 of the IPLRA. The next level of litigation on these issues will undoubtedly involve an interpretation of that provision. ♦

NOTES

[1]*Peters v. Health & Hosp. Governing Commission of Cook County*, 88 Ill. 2d 316, 430 N.E.2d 1128 1130 (1981); *Board of Educ. of City of Chicago v. Chicago Teachers Unions*, 88 Ill. 2d 63, 430 N.E.2d 1111, 1115-16. (1981).
[2]122 Ill.2d 353, 522 N.E.2d 1219 (1988).
[3]*Id.* at 364, 522 N.E.2d at 1223.
[4]65 ILCS 5/10-1-1.
[5]*See Decatur,* 122 Ill. 2d at 362, 522 N.E. 2d at 1221.
[6]*Id.* at 365, 522 N.E. 2d at 1224.
[7]*Id.*
[8]299 Ill. App. 3d 615, 701 N.E.2d 153 (1st. Dist. 1998).
[9]5 ILCS 315/15(a) to (b).
[10]5 ILCS 315/7.
[11]301 Ill. App. 3d 323, 703 N.E. 2d 559 (1st. Dist. 1998).
[12]5 ILCS 315/8.
[13]115 ILCS 5/4; 5/10(c); 5/14(a)(8); 14(b)(6).
[14]Ca. No. S-CA-01-037 (ILRB, State Panel 2001).
[15]*Id.* slip op. at 2 n.3.
[16]*Id.* slip.op. at 3, citing 50 ILCS 745(l).
[17]*Id.*, slip op. at 3 n.5.
[18]*Id.*, slip op. at 4.
[19]The interest arbitration proceeding was suspended or dismissed by agreement of the parties, and the status quo regarding the disputed provisions dealing with disciplinary grievances and the Firemen's Disciplinary Act remained unchanged pending the Labor Board's resolution of the unfair labor practice issues. The parties also agreed to implement their previous tentative agreements on other contractual issues, and a collective bargaining agreement was signed.
The union had proposed an election of remedies for employees to choose either grievance arbitration of disciplinary matters, including discharges, or appeal such issues under the statutory procedure before the Board of Fire and Police Commissioners. This proposal, unlike the union proposal in *Decatur*, was not intended to remove or eliminate the jurisdiction of the Board of Fire and Police Commissioners.
The Firemen's Disciplinary Act provides for the rights of firefighters in employer interrogations, the right to counsel and the preservation of constitutional and statutory rights. 50 ILCS/745/1 *et seq.*
[20]*Wheeling Firefighters Association,*slip op. at 6-7.
[21]*See County of Cook (Cook County Hosp.),* 15 PERI¶ 3009 (ILLRB 1999); *Board of Trustees Univ. of Ill.,* 8 PERI¶ 1014 (Il IELRB 1999), *aff'd.*, 244 Ill. App. 3d 945, 612 N.E.2d 1365 (1993).
[22]*Wheeling Firefighters Association,*slip op. at 7.
[23]65 ILCS 5/10-2.1-17.
[24]65 ILCS 5/10-2.1-17.
[25]*Wheeling Firefighter's Association*, slip op. at 9.
[26]Pub. Act. 91-650, Tr. 9-45 44 (May 11, 1999).
[27]House of Representatives Tr. Debate, at 125, 128, 129, 130, 132, and 133, (May 20, 1999).
[28]House of Representatives Tr. Debate, pp. 48-49, (Nov. 17, 1999).
[29]*Id.* at 53.
[30]*Id.* at 58.
[31]Sen. Tr. at 10, (Nov. 30, 1999). The Senate overrode the veto on Nov. 30, 1999.
[32]*Illinois Nurses Association,* 15 PERI ¶ 1111 (IELRB 1999); *enf'd*, 318 Ill. App. 3d 519, 741 N.E.2d 519 (1st Dist. 2000).
[33]165 Ill. 2d 80, 649 N.E.2d 369 (1995).
[34]Section 14(a)(1) prohibits educational employers, their agents and their representatives from "interfering, restraining or coercing employees in the exercise of the rights guaranteed under the Act." Section 14(a)(8) prohibits educational employers, their agents and their representatives from refusing to comply with the provisions of a binding arbitration award. In deciding whether an educational employer has violated Section 14(a) (8), the Board is to determine whether there is a binding arbitration award, the content of the award, and whether the employer has complied with the award. *Board of Educ. DuPage High Sch. Dist. No. 88 v. IELRB*, 246 Ill. App. 3d 967, 617 N.E.2d 790 (1st Dist. 1993); *Board of Educ. Danville Community Consol. Sch. Dist. No. 118 v. IELRB* 175 Ill. App. 3d 347, 529 N.E. 2d 1110 (4th Dist. 1988).
[35]*SEDOL Teachers Union v. IELRB*, 282 Ill. App. 3d 804, 810 668 N.E. 2d 1117, 1122 (1st Dist. 1996); *Chicago Board of Education*, 2 PERI ¶ 1089 at VII-256, (IELRB 1986) (footnotes omitted), *rev'd in part on other grounds*, 170 Ill. App. 3d 490, 524 N.E. 2d 711 (4th Dist. 1988).
[36]115 ILCS 5/10(b).
[37]105 ILCS 5/10-22.4.
[38]105 ILCS 5/24-12.
[39]110 ILCS 70/36(d) (3).
[40]*Illinois Nurses Ass'n v. Bd. of Trustees, Univ. of Ill.*, 16 PERI ¶ 1053, 2000 PERI (LRP) LEXIS 80, & 33 (IELRB 2000).
[41]*Id.* at *34.
[42]*Illinois Nurses Assn'n v. Bd. of Trustees,*

Univ. of Ill., 318 Ill. App. 3d 519, 528, 741 N.E.2d 1014, 1021 (1st Dist. 2000).
[43]*Id.*
[44]307 Ill. App. 3d 1005, 719 N.E.2d 300 (4th Dist. 1999).
[45]309 Ill. App. 3d 88, 721 N.E.2d 676 (1st Dist. 1999).
[46]*Illinois Nurses Association*, 15 PERI ¶ 1111 at IX-426 n.19.
[47]*Board of Governors*, 170 Ill. App. 3d at 483, 524 N.E.2d at 770.
[48]244 Ill. App.3d at 945, 949, 612 N.E.2d 1365 1368.
[49]*Id.* at 950, 612 N.E.2d at 1368.
[50]229 Ill. App. 3d 1002, 594 N.E.2d 742 (3rd Dist. 1992)
[51]*Id.* at 1007-08, 594 N.E.2d at 745-46 (Slater, J dissenting).
[52]315 Ill. App. 3d 459, 734 N.E.2d 33 (3d Dist. 2000). ♦

RECENT DEVELOPMENTS

by the Student Editorial Board

Recent Developments is a regular feature of T*he Illinois Public Employee Relations Report*. It highlights recent legal developments of interest to the public employment relations community. This issue focues on developments under the two collective bargaining statutes and EEO laws.

IELRA Developments
Confidential Employees

In *One Equal Voice, The Association for Academic Professional Employees at the College of Lake County, Local 2394, IFT/AFT v. College of Lake County,* 17 PERI ¶ 1009 (IELRB 2001), the IELRB held that an administrative assistant and research associate who worked under the supervision of the assistant vice-president of institutional effectiveness for the College of Lake County were confidential employees and properly excluded from the bargaining unit. In this case the Union filed a representation petition, won the election 103-102, and the College challenged the ballots of the administrative assistant and research associate. Section 2(n) of the IELRA defines confidential employee as one who: (i) in the regular course of his or her duties, assists and acts in a confidential capacity to persons who formulate, determine and effectuate management policies with regard to labor relations or who (ii) . . . has access to information relating to the effectuation or review of the employer's collective bargaining policies.

The Union argued that the assistant vice-president of institutional effectiveness' status as a person who "formulates, determines and effectuates management policies regarding labor relations," was speculative because she performed no such duties at the time of the election. However, there was testimony that she was hired to be a part of the bargaining team and that she would assume those duties in the future. From that testimony and similar evidence the ALJ concluded that the assisant vice president's duties were firm and the IELRB upheld the ALJ's determination.

While neither the administrative assistant nor the research associate had performed any duties relating to labor relations or collective bargaining, the ALJ found that their duties had "firm contours" and that it was not speculative to conclude that both would have access to confidential labor relations materials. The IELRB affirmed the ALJ's determination because both employees had the potential for obtaining advance knowledge of confidential labor relations information, thereby upsetting the normal balance of negotiations. Dissenting IELRB Chairman Berendt, and Members Gavin and Sered argued that the employees were not confidential because their supervisor had not yet participated in labor relations work and, thus, her duties were speculative or hypothetical.

IPLRA Developments
Representation Issues

In *Illinois Fraternal Order of Police Labor Council v. ILLRB,* 745 N.E.2d 647 (Ill. App. 1st Dist. 2001), the First District Appellate Court upheld the ILLRB's finding that three separate unions may jointly represent a single group of employees under the IPLRA.

The Illinois Fraternal Order of Police Labor Council had filed a petition seeking an election among a group of City of Chicago public safety employees who were part of a bargaining unit that was jointly represented by three labor organizations. Certain titles within the unit fell within in each of the three unions' jurisdiction. The FOP was only seeking representation of those employees that fell under the jurisdiction of one of those unions.

The court first noted that joint representation has been allowed under the National Labor Relations Act and applied this NLRA precedent to the similar provisions of the IPLRA. The court looked at the factors set out by the NLRB for joint representation: (1) the existence of a single chief spokesperson in collective bargaining negotiations; (2) the exchange of only joint proposals throughout negotiations; (3) the creation of one bargaining agenda by the joint representative; (4) the preparation of a single agreement signed by each member of the joint representative; (5) the application of the agreement to all unit employees; and (6) the pooling of ratification votes from each member of the joint representative.

The FOP argued that the recognition clause in the collective bargaining agreement which stated that the three unions were "autonomous and independent labor organizations each representing certain employees in a portion of a single collective bargaining unit" negated the joint representation. Further, the FOP argued that under the agreement, each union separately collected dues and administered grievance procedures.

The court again turned to NLRA precedent which "has found joint representation appropriate despite the existence of different constitutions, bylaws, wage rates, grievance procedures, administrative offices, and elected officials." The court concluded that the ILLRB's findings were not clearly

erroneous, and affirmed its decision refusing to carve out a part of the unit.

EEO Developments

ADA

In *Board of Trustees of the University of Alabama v. Garret*, 121 S.Ct. 995 (2001), the United States Supreme Court held that suits seeking money damages against state employers under Title I of the Americans With Disabilities Act are barred by the Eleventh Amendment. The Court recognized that in the ADA Congress expressly purported to abrogate the states' Eleventh Amendment immunity, but held that Congress lacked the constitutional authority to do so.

Congress drew on its enforcement powers under Section 5 of the Fourteenth Amendment. The Court held that the disabled are not even a "quasi-suspect class." Consequently, states are only required to meet rational-basis review. The Court examined whether Congress had "identified a history and pattern of unconstitutional discrimination by the States or state law." The majority concluded that the record Congress relied on fell "far short of even suggesting the pattern of unconstitutional action on the part of the States on which § 5 legislation must be based."

Moreover, while some of the evidence "undoubtedly" showed "an unwillingness on the part of state officials to make the sort of accommodations for the disabled required by the ADA," it was debatable whether this was "irrational." The Court then held that the ADA did provide a congruent and proportional remedy for the harm. First, the ADA requires employers to make "existing facilities" readily accessible. This runs counter to a state's "entirely rational (and therefore constitutional)" decision to hire only those who could use existing facilities to save "scarce financial resources."

In addition, the ADA "far exceeded what is constitutionally required" of the states because it requires reasonable accommodation in the absence of undue hardship." This clashes with the proposition that under the rational-basis review standard those challenging a state's decision are required to "negate reasonable bases" for that decision. Moreover, the ADA forbids state employers from using "standards, criteria, or methods of administration that disparately impact the disabled, without regard to whether such conduct has a rational basis." ♦

Further References

(compiled by Margaret A. Chaplan, Librarian, Institute of Labor and Industrial Relations Library, University of Illinois at Urbana-Champaign)

Eaton, Adrienne E., and Thomas Nocerino. THE EFFECTIVENESS OF HEALTH AND SAFETY COMMITTEES: RESULTS OF A SURVEY OF PUBLIC-SECTOR WORKPLACES. Industrial Relations, vol. 39, no. 2, April 2000, pp. 265-290.

The authors surveyed labor and management representatives at public sector work sites in New Jersey inquiring about the existence and structure of joint safety and health committees and perceptions of their effectiveness in order to determine whether the committees' functioning resulted in reduced work injuries and illnesses. They hypothesized that the

scope of the committee's duties and responsibilities, the intensity of its efforts, the amount of training, and the amount of worker involvement contribute to effectiveness in reducing accidents and illnesses. About 42% of the workplaces had a joint safety committee, and its effectiveness was rated about midway between average and good. When comparisons were made with official state lost workday statistics, the authors found that public workplaces with joint safety committees were not significantly different from those without such committees, and they concluded that merely having a committee is not enough to guarantee a safer workplace.

Hewitt, Gordon J. GRADUATE STUDENT EMPLOYEE COLLECTIVE BARGAINING AND THE EDUCATIONAL RELATIONSHIP BETWEEN FACULTY AND GRADUATE STUDENTS. Journal of Collective Negotiations in the Public Sector, vol. 29, no. 2, 2000, pp. 153-166.

One of the arguments made by opponents of collective bargaining by graduate research and teaching assistants at universities is that the establishment of a bargaining relationship interferes with the faculty's ability to teach, mentor, and advise doctoral students. The author tested this argument by surveying the attitudes and beliefs of faculty members in the liberal arts and sciences at five universities where graduate students were unionized: the University of Massachusetts, the State University of New York at Buffalo, the University of Florida, the University of Michigan, and the University of Oregon. Faculty members who responded to the survey did not have a negative attitude toward graduate student bargaining. In fact, they considered graduate students to be employees of the university, that they had the right to bargain, and that unionization protected the students from unfair treatment. Nor did the faculty think that bargaining interfered with the student-faculty relationship. They did have concerns about certain aspects of bargaining, such as the amount of time students spent in organizing and in union work, and the increased costs and bureaucracy connected with administering the contract.

Lieberman, Myron. UNDERSTANDING THE TEACHER UNION CONTRACT: A CITIZEN'S HANDBOOK. New Brunswick NJ: Transaction Publishers, 2000. 219p.

This handbook is intended as a guide to contract language for school board members, school administrators, legislators, and parents, but it can also be used as a guide to policy and work rules in nonunion school districts. Its purpose is to aid in identifying deficiencies in contract language and to suggest improvements. Issues are grouped into nine broad categories covering school board/union relations, organizational security, union rights, released-time subsidies, union rights in negotiations, representation issues, grievance procedures, grievance arbitration, and contemporary union initiatives. Within each section is a discussion of the issue, using examples from actual contracts, with suggestions of the main points to be considered in negotiating such provisions.

Peterson, Donald J. THE ARBITRATION OF TARDINESS CASES. Journal of Collective Negotiations in the Public Sector, vol. 29, no. 2, 2000, pp. 167-174.

Forty-five arbitration awards involving discipline or discharge in tardiness cases from the period 1984-1996 were analyzed for patterns in arbitrator decision making. Three issues surface in such cases: the definition of tardiness, the number of incidents of tardiness before discipline is imposed, and the appropriateness of the penalty. The author concludes that arbitrators uphold employer actions in cases where tardiness is carefully defined, where a specific number of incidents or incidents over a specific time period is established, and where progressive discipline is used.

(Books and articles anotated in Further References are available on interlibrary loan through ILLINET by contacting your local public library or system headquarters.)

The Illinois Public Employee Relations Report provides current, nonadversarial information to those involved or interested in employer-employee relations in public employment. The authors of bylined articles are responsible for the contents and for the opinions and conclusions expressed. Readers are encouraged to submit comments on the contents, and to contribute information on developments in public agencies or public-sector labor relations. The Illinois Institute of Technology and University of Illinois at Urbana-Champaign are affirmative action/equal opportunity institutions.

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